

Summary of Comments

BUREAU OF ELDER AND ADULT SERVICES PROPOSED CHANGES TO POLICY MANUAL SECTIONS 63

The Bureau of Elder and Adult Services (OES) held a public hearing on proposed amendments to Section 63 – In-home and Community Support Services for Elderly and Other Adults on Wednesday, August 24, 2005 at 10:00 AM in Conference Room 1A at 442 Civic Center Drive in Augusta. One person attended the hearing, who made some useful comments about his experience with the program as well as asking about how the proposed changes in Section 63 would affect services. OES staff present were: Mollie Baldwin, Catherine Cobb, and Betty Forsythe. The deadline for written comments from the public was 5:00 PM on Wednesday, September 7. Comments made at the hearing or in writing by the deadline were made by:

1. Catherine Valcourt, Legal Counsel, Long-term Care Ombudsman Program(1)
2. Louise Olsen, Research Analyst, Muskie School (2)
3. Phil Bergeron, Lucy Bergeron PCA Agency (3)

The number(s) at the end of each comment indicate by which commenter(s) it was submitted.

4. SECTION 63.01 (J) Cognitive Capacity

Commenter asked what is the meaning of this definition.(Commenter 3)

OES response: *This means that a consumer who chooses to manage his/her own care and register as a Personal Care Agency under the Family Provider Service Option must be determined to have the cognitive capacity to do this. A consumer deemed to not meet the definition of cognitive capacity as defined in Section 63.01(J) may not register as the Personal Care Agency.*

5. Section 63.01(R) Family Provider Service Option

Commenter states that “no more then” should read “no more than” (Commenter #2)

OES response: *This has been revised and OES thanks the commenter for this comment.*

6. SECTION 63.02 (A) (7) General and Specific requirements

Commenter states that disallowing nursing facility level of care in assisted housing limits consumer choice and the ability to age in place.

Commenter stated that this change may force individuals into a nursing home setting that is more restrictive and may be more costly than assisted housing.

Commenter (1)

OES response: *Under the current rules personal care is not allowed in Assisted Housing since it is the responsibility of the assisted housing provider to deliver personal support services that include ADLs, IADLs or in home respite. This program funding may not be used to duplicate services provided by the Assisted Housing program. Although nursing services were allowed, this service was not utilized and contributed to confusion about what covered services could be accessed when residing in assisted housing. This change further clarifies current policy.*

7. SECTION 63.04 (B) Care Monitoring

Commenter states that the word “agency” should be added after “provided by a licensed social services.”(Commenter #2)

OES response: *There has been no change in this aspect of the rule. The licensed social services or health professional does not requires the addition of agencies because the intent was not to state licensed social work agency.*

8. Section 63.03 (E) Duration of Services

Commenter states that most consumers chose to receive care at home even when they need nursing facility care. The commenter encourages this program to provide for equal access by capping Level IV HBC at the average cost of MaineCare nursing facility level of care. The proposed increase is appropriate but does not give the consumer a meaningful opportunity to choose to receive care in the community instead of an institution. (Commenter 1)

OES response: *The cap is being increased from 67% to 80% of the average MaineCare cost of nursing facility level of care. This cap is established to meet budgeted savings targets set by the Legislature. The Department was required through the budget bill to reduce costs of services under this program and reduced the cap to 67% and has been able to increase it to 80% because of other savings realized in the program. No changes have been made as a result of this comment.*

9. SECTION 63.04 (2)(E) Personal Support Services (PSS)

Commenter recommends adding language that there is no limit on IADLs for Level IV since language does not make sense to commenter without reference to IADLs. (Commenter 2)

OES response: *The language has been revised to add that there are no limits on IADLs for Level IV.*

10. SECTION 63.06 (C) Policies and Procedures

Commenter states that currently, termination of suspended services can occur on the 31st day only when a consumer has been hospitalized or is using institutional care services. Commenter opposes the proposed change that expands the reasons a consumer's suspended services can be terminated to the 31st day of "circumstances requiring suspension." and recommend keeping the current regulation as written,

that is, termination is triggered on the 31st day of suspension only if [1] a consumer is hospitalized or [2] using institutional care services. This term is vague and undefined. Commentor believes this change unfairly broadens the suspension/termination provision without definition or criteria and that terminating a consumer's "suspended" services 31 days after the consumer has been found eligible for needed care is not a meaningful way to deal with staffing shortages. (Commenter 1)

OES response: This does not represent a change in current rules or how this program operates. Under 63.06 (C) services may be suspended for up to thirty days for any reason. Under this section and under 63.03(G) (8) when services have been suspended for more than 30 days eligibility may be terminated. This change in language clarifies policy to improve consistency and reflects the reality that services are suspended for reasons other than hospitalizations and institutional placement. Since it was originally written, the Department has found that suspension occurs for reasons other than institutionalization and expansion of the stated reasons benefits the consumers served. Suspension would not occur simply because staffing has not been located within 30 days. The intent of the change was not to address staffing shortages

11. Section 63.05(E) Non Covered Services Commenter states should say "...pursuant to Section 63.04(D) and (F); (Commenter 2)

OES response: *The policy citations have been corrected to 63.04(D) and (F)*

12. Section 63.05(D) Non Covered Services The Commenter urges the Department of Health and Human Services to fully fund the CNA Registry to ensure compliance with this fundamental consumer protection. The Commenter states currently no one in state government has the legal authority to investigate complaints against individual unlicensed assistive personnel. There is no state authority to investigate complaints against individual UAPs or a UAP agency. Consumer safety in the unsupervised home setting is at risk.

OES response: *This is beyond the scope of authority of these rules. No change can be made. The Department thanks the commenter for the suggestions.*

13. Section 63.09(B) (4) Other responsibilities of the Office of Elder Services Commenter opposes the complete elimination of a quality review process for section 63 and section 69 programming and suggests adding the oversight of section 63 and section 69 programming to the statutorily established 'Quality Review Committee' of the Maine home care coordination agencies since the HCCA-QRC has a similar charge, that is, reviewing the provision of home care services, 22 MRSA § 5107-1 (Commenter 1).

OES response: *The QARC committees were offered the opportunity to continue under their own leadership and responsibility and declined to accept this responsibility. Department staff are no longer available to complete these tasks because of increased responsibilities required to be compliant with the waiver QA protocols issued by the Centers for Medicare and Medicaid. Amending 22 MRSA § 5107-1 is beyond the scope of these rules*

14. Section 63.10 (C) Personal Support Services Commenter states that the word “Attendant” should be deleted in the sentence “to register as a Personal Care Attendant Agency.” (Commenter 2)

OES response: *The language has been corrected.*

15. Section 63.10 (C)(1) (b) Personal Support Services: Commenter suggests adding a Section mark to 1717 needs a Section and asks for clarification as to whether or not an agency registers pursuant to 22 MRSA §1717 or is it a different section? (Commenter 2)

OES response: *The section mark has been added. It is Section 1717 that requires the registration of a personal Care Assistant Agency*

The Department also made several technical corrections in this rule, including changes in grammar, capitalization, punctuation and consistency of the format when using numbers in the text of the policy.

Additionally, changes were made to the names of offices within the Department of Health and Human Services as follows:

- The Bureau of Elder and Adult Services is now the Office of Elder Services.
- BEAS is now OES